

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1592 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ADIBEN LAXAMNBHAI WD/O

LAXMANBHAI KESHIYAJI

Versus

REGIONAL P.F COMMISSIONER

Appearance:

MR DS VASAVADA for Petitioner

MR BHARAT T RAO for Respondent No. 1

MR JD AJMERA for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. Learned Advocate Mr. D.S. Vasavada is appearing
on behalf of petitioner and Learned Advocate Mr. B.T.
Rao is appearing on behalf of Respondent No.1. In the

present petition, Rule has been issued returnable on 11.07.1991 on 4th July, 1991. The Respondent No.1 and 2 have not filed any reply to the present petition.

2. The present petition is filed by the petitioner with a prayer to hold that pension under the Family Pension Scheme, 1971 framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1971 is a fundamental right of the petitioner and therefore, direct the Respondent No.1 to pay the family pension at the rate admissible under the Family Pension Scheme framed under the Provident Fund Act with an interest of 18%. The petitioner has submitted a Certificate vide Annexure A dated 27.11.1982 which certified that Laxmanji Keshavji was an insured person covered under the E.S.I. Act and has been paid Sickness Benefit for 91 days from 8th January, 1980 to 18th April, 1980 at the rate of Rs.10/amounting to Rs.910/- and Extended Sickness Benefit for 199 days from 19th April, 1980 to 3rd November, 1980 Rs.12.50/- per day which comes to Rs.2487.50/-. The application filed by the petitioner has been rejected by Authority on the ground that Laxmanji Keshavji had not completed continuous service of one year during the period of 1976-77 and 1977-78 and his services broke. Therefore, he is not entitled to the amount of pension. There is also one Certificate produced by the petitioner dated 31st December, 1984 wherein the Respondent No.2 Mills certified that the deceased Bhikhaaji Chhanaji, a Frame doffer in Mills' Spinning Department was on services continuously till his death. The facts mentioned in the petition by the petitioner that the husband of the petitioner was in continuous service and

expired on 21st January, 1981 and the deceased was in receipt of the allowances which were being paid by the E.S.I. Corporation. It is also a contention raised by the petitioner that the Respondent No.1 has rejected the claim of the petitioner but not given any reason in support of his conclusion and considering the benefits of E.S.I. which were available to the deceased husband of the petitioner, there was no break in service and therefore according to the petitioner, she is entitled to the benefit of Family Pension Benefit under the Provident Fund Act.

3. After considering the submissions made in the petition and relevant documents and in absence of the fact that Respondent No.1 and 2 both have not filed any reply to the petition, in the interest of justice if it is directed to the Respondent No.1 to examine the case of the petitioner for entitlement of receiving the benefit of family pension under the provisions of Provident Fund Act it will meet the ends of justice. Therefore, it is directed to the Respondent No.1 for taking decision whether she is entitled to the benefit of family pension under the PF Act or not. While deciding this representation, the Respondent No.1 shall keep in mind the very object of the Family Pension Scheme and also consider the Certificate given by the E.S.I. Corporation dated 27th November, 1982 and other relevant documents. Therefore, it is directed to Respondent No.1 to decide the representation of the petitioner and the said

petition itself is considered to be a representation claiming the benefit by the petitioner in respect to the family pension, within a period of two months with sympathetic consideration in accordance with law. Therefore, the present petition is disposed of in view of the above observation and direction. Rule is discharged. No order as to costs.

(H.K. Rathod, J.)

hki